IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 678 OF 1986

M/s. Jayant Metal Mfg. Co.
P.Ltd ...Plaintiffs.
vs.
M/s. Bharat Heavy Electricals Ltd ...Defendants.

S.P. Kanga for the plaintiffs.
Ms. Neeta Rajdan i/b. DSP Associates
for the defendants.

**CORAM: S.U. KAMDAR, J.**

**DATE : 3RD FEBRUARY, 2006.**

**P.C. :**

ISSUES SETTLED

1. Whether the plaintiff is entitled to the delivery 598 metric tonnes of wire or alternatively whether the plaintiff is entitled to the decree for Rs.3,74,563.03/- towards the claim for damages ?

2. Whether the defendant proves that the defendant no.2 was entitled to adjustment OF Rs.1,39,500.44/- as pleaded in para 9 of the written statement ?

3. Whether the defendant proves that due to the losses suffered by the defendant the defendant is not liable to make payment of the aforesaid amount ?

4. Relief, if any ?

1. The present suit is filed by the plaintiff for the recovery of Rs.82,166.45/- alongwith interest at the rate of 24%p.a. The only relief sought is that the defendant should be directed to hand over 598 metric tonnes of cotton. On failure to do so there shall be decree in favour of the plaintiffs and against the defendant for sum of Rs.3,24,563/-.

2. It is the case of the plaintiff that sometime in or about 1981 negotiations were

carried out and ultimately orders were placed with the plaintiff to supply fabricated cotton strips of particular dimension on various terms and conditions set out therein. It is further case of the plaintiff that pursuant thereof the defendant placed the order for supply of cotton strips on fabricated basis. The contract was concluded and the rate arrived at was Rs.7.50/- per kg. It is further the case of the plaintiff that under the contract the plaintiff was entitled to the cotton equivalent to that of cotton strips. It is the case of the plaintiff that the plaintiff has supplied the goods but the defendant has neither made the payments at the agreed rate of 750 per kg but has also committed breach of not effecting delivery of 5.98 metric tonnes of cotton and therefore the plaintiffs are seeking relief that the said cotton should be handed over or alternatively the amount should be paid towards the damages. The defendants have filed written statement. In the written statement the defendant has claimed an adjustment of Rs.1,29,500.44/- In para 9 of the written

statement the said claim is admitted. The defendant has also claimed further losses on account of none fulfilment of the order by the plaintiff and has claimed that the suit filed by the plaintiff is barred by the law of limitation.

3. On the aforesaid pleading the issues were drawn up. The learned counsel for the defendant has no instructions to prosecute the matter and they have applied for discharge with the office of the Prothonotary and Senior Master. Learned counsel for plaintiff has tendered the original documents which is taken on record and marked Ex.A colly. In my opinion apart from the aforesaid fact that there is admission of the liability of the defendant in the written statement case is made out by the plaintiff for grant of decree in favour of the plaintiffs and accordingly decree is passed in favour of the plaintiffs and against the defendants in terms of prayer clause (a) and (c). However the interest will be at the rate of 12% p.a. simple interest from the date of the suit till payment and/or

realisation.

sd/-

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